

MELINDA HAAG (CABN 132612)
United States Attorney

MIRANDA KANE (CABN 150630)
Chief, Criminal Division

JENNIFER GASPAR (CABN 266726)
Special Assistant United States Attorney
1301 Clay Street, Suite 340S
Oakland, CA 94612
Telephone: (510) 637-3680
Fax: (510) 637-3724
E-Mail: jennifer.gaspar@usdoj.gov

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,) No. CR 11-0325 SBA
Plaintiff,) UNITED STATES' SENTENCING
v.) MEMORANDUM
KAMAISHAY N. CARTER,) Date: February 1, 2012
a/k/a "Maraco Askari Jones,") Time: 10:00 a.m.
Defendant.) Court: Hon. Saundra Brown Armstrong

The United States of America requests that defendant Kamaishay N. Carter be sentenced to 77 months of imprisonment, representing the low end of the Sentencing Guidelines' ("Guidelines") range of imprisonment.

STATEMENT OF THE CASE

On May 19, 2011, a federal grand jury in the Northern District of California returned a one-count Indictment charging Defendant Kamaishay N. Carter (“Defendant”) with felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1). The Indictment alleged that on April 11, 2011, Defendant possessed a Colt .45 caliber semi-automatic firearm and seven rounds of ammunition, and that the firearm and ammunition had traveled in interstate

1 commerce. The Indictment further alleged that at the time Defendant possessed the firearm and
2 ammunition, he had been convicted of a felony punishable by a term of imprisonment exceeding
3 one year. On November 14, 2011, Defendant and the United States reached an agreement
4 regarding disposition of this matter and submitted a plea agreement prepared according to Rule
5 11(c)(1)(C) of the Federal Rules of Criminal Procedure to this Court for consideration. This
6 Court ordered the United States Probation office to prepare a pre-plea Presentence Investigation
7 Report (“PSR”), and scheduled February 1, 2012, for acceptance of plea and sentencing.

8 **STATEMENT OF FACTS**

9 On April 11, 2011, Defendant discarded a loaded handgun while fleeing from Oakland
10 Police Department (“OPD”) officers near the intersection of 28th Street and San Pablo Avenue in
11 Oakland. Two OPD officers in a patrol vehicle encountered Defendant on a street corner at
12 approximately 3:18 a.m. The officers asked Defendant for his name, to which he responded
13 “James Johnson” while walking away quickly. Defendant jumped over a fence and was heard
14 discarding a metal object before officers could exit their patrol vehicle. Additional police units
15 were called in. Officers observed Defendant running through several yards of apartment
16 complexes. He was eventually located and apprehended. Officers recovered a loaded Colt, ACP
17 MK IV .45 caliber semi-automatic firearm bearing serial number FA40135 on the ground at the
18 location where Defendant had initially fled. Defendant’s discarded sweatshirt and a bulletproof
19 vest were also located nearby.

20 A records check by the Bureau of Alcohol, Tobacco, and Firearms indicated that the
21 firearm and ammunition Defendant possessed were all manufactured or distributed outside the
22 state of California and therefore had traveled in interstate commerce.

23 **DEFENDANT’S CRIMINAL HISTORY**

24 Defendant’s extensive criminal history dates back to 1989 and includes acts of violence,
25 multiple controlled substance offenses, parole violations, and numerous arrests for which he was
26 never charged. On October 11, 1995, Defendant was convicted of selling a controlled substance
27 and sentenced to 22 days in jail. (PSR ¶ 28.) On April 22, 1999, Defendant was convicted of
28 possession or purchase of cocaine base for sale, and sentenced to one year in jail and five years in

1 prison. (Id. at ¶ 29.) He was sentenced to three years in prison for this offense when his
2 probation was revoked in 2002. (Id.) He was convicted of possession or purchase of cocaine
3 base for sale again on August 23, 2006, and on June 23, 2010. (Id. at ¶¶ 32 and 34.) He also
4 received a felony conviction for bringing alcohol or drugs into prison on May 4, 2008. (Id. at
5 33.)

6 On June 7, 1999, Defendant was convicted of carjacking and sentenced to three years in
7 state prison. (PSR ¶ 30.) The police report from this incident indicates that Defendant grabbed a
8 woman's keys as she walked to her vehicle and said, "Gimme those keys before I kill you bitch."
9 Defendant hit and kicked the victim on her shoulders, arms, legs, and head. He then grabbed her
10 purse and drove away in her vehicle. Defendant took the vehicle through several red lights,
11 striking another car and jumping over a traffic median in the process. Defendant fled on foot
12 after the vehicle came to a stop. Police officers were able to track him down through a pager he
13 left at the scene. Defendant was identified by the victim and convicted. The PSR indicates that
14 Defendant was paroled and returned to custody at least ten times following this offense,
15 including on the instant offense. (Id.)

16 **SENTENCING GUIDELINES CALCULATIONS**

17 Defendant's base offense level begins at 22. He committed the instant offense after
18 sustaining at least two felony convictions for a controlled substance offense or a crime of
19 violence. U.S.S.G. § 2K2.1(a)(2). Defendant's April 22, 1999, August 23, 2006, and June 23,
20 2010, convictions for possession of cocaine or cocaine base for sale in violation of California
21 Health and Safety Code sections 11351 and 11351.1, are categorical controlled substance
22 offenses under the Guidelines. See United States v. Charles, 581 F.3d 927 (9th Cir. 2009).
23 Defendant has accepted responsibility for his crime, so the United States recommends that the
24 offense level should be decreased by two levels, applying U.S.S.G. § 3E1.1(a). Because
25 Defendant has allowed the United States and the Court to allocate resources efficiently to avoid
26 preparing for trial, the United States moves for a third point for acceptance of responsibility,
27 pursuant to U.S.S.G. § 3E1.1(b). The United States agrees with Probation that this results in a
28 total offense level of 21.

1 **THE 18 U.S.C. § 3553(a) FACTORS SUPPORT A SENTENCE OF 77 MONTHS**

2 After United States v. Booker, 543 U.S. 220 (2005), the Court has the discretion to
3 consider the factors in 18 U.S.C. § 3553(a) when sentencing a defendant. Defendant's Criminal
4 History Category is VI; the highest category established by the Guidelines. The Guidelines range
5 for offense level 21 and criminal history category VI is 77-96 months. The United States
6 recommends a sentence at the low-end of the Guidelines for this range.

7 The nature and circumstances of this offense indicate that Defendant openly disregards
8 public safety. Not only was Defendant carrying a loaded firearm in Oakland, but he discarded
9 this firearm in a public place. Defendant also lacks respect for the law. He was a prohibited
10 person when he possessed the loaded firearm. Defendant has an extensive criminal history,
11 including repeated arrests and convictions for violent offenses, possessing or selling controlled
12 substances, as well as multiple probation or parole violations committed while serving other
13 sentences. A 77 month sentence is fair given the seriousness of this offense, the extent of
14 Defendant's criminal history, and the potentially grave consequences that may have resulted had
15 police officers not recovered the firearm.

16 A 77 month sentence should also serve the additional statutory goals set forth in section
17 3553: reflecting the need to promote respect for the law and provide just punishment for the
18 offense; the need to afford adequate deterrence to criminal conduct; the need to protect the public
19 from further crimes of the defendant; and the need to avoid unwarranted sentence disparities
20 among defendants with similar records who have been found guilty of similar conduct.

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

CONCLUSION

For the foregoing reasons, the United States asks that this Court sentence Defendant to the low end of the Guidelines range, 77 months in custody, followed by three years of supervised release, and a \$100 special assessment.

DATED: January 25, 2012

Respectfully submitted,

MELINDA HAAG
United States Attorney

/s/
JENNIFER GASPAR
Special Assistant United States Attorney